



March 28, 2003

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## ENGROSSED SENATE BILL No. 114

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DIGEST OF SB 114 (Updated March 26, 2003 2:20 PM - DI 69)

**Citations Affected:** IC 14-28; noncode.

**Synopsis:** Floodway construction; environmental crimes. Adopts the National Flood Insurance Program regulations as the criteria for determining whether a person is allowed to construct a new residence in a floodway along the Ohio River. Specifies the lowest floor of a new residence constructed in a floodway along the Ohio River must be at least two feet above the 100 year frequency flood elevation. Establishes the environmental crimes task force to study the appropriate class of criminal violation that should be assigned to each type of environmental crime. Requires the task force to file a final report before November 1, 2005.

**Effective:** Upon passage; July 1, 2003.

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**Kenley, Lanane**  
(HOUSE SPONSORS — KUZMAN, WOLKINS)

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January 7, 2003, read first time and referred to Committee on Environmental Affairs.  
January 14, 2003, reported favorably — Do Pass.  
January 23, 2003, read second time, amended, ordered engrossed.  
January 24, 2003, engrossed.  
January 27, 2003, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Environmental Affairs.  
March 27, 2003, amended, reported — Do Pass.

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ES 114—LS 6302/DI 52+



March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 114

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A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 14-28-1-26.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26.5. (a) This section  
3 applies to the following activities:  
4 (1) The placement or replacement of a mobile home within a  
5 boundary river floodway.  
6 (2) The repair of a residence that:  
7 (A) is located in a boundary river floodway; and  
8 (B) has been damaged by floodwaters or another means;  
9 except for the reconstruction of a residence to which section 25 of  
10 this chapter applies.  
11 (3) The construction of an:  
12 (A) addition to; or  
13 (B) improvement of;  
14 a residential structure within a boundary river floodway.  
15 **(4) The construction of a new residence within a boundary**  
16 **river floodway.**  
17 (b) The federal regulations that:

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(1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);

(2) are published in 44 CFR Parts 59 through 60; and

(3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. **However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.**

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

(1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and

(2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

(1) file with the director a verified written application for a permit on a form provided by the department; and

(2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

(1) set forth the material facts concerning the proposed activity; and

(2) in the case of an activity described in subsection (a)(1), **or** (a)(3), **or** (a)(4), include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

(1) there is a dispute under this section about the elevation of a site; and

(2) the elevation of the site has been determined by a registered land surveyor;

the elevation determined by the registered land surveyor must be used as the accepted elevation.

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1 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this  
 2 SECTION, "task force" refers to the environmental crimes task  
 3 force established under this SECTION.

4 (b) The environmental crimes task force is established.

5 (c) The task force consists of the following members:

6 (1) Two (2) members of the house of representatives appointed  
 7 by the speaker of the house of representatives. The members  
 8 appointed under this subdivision may not be members of the  
 9 same political party.

10 (2) Two (2) members of the senate appointed by the president  
 11 pro tempore of the senate. The members appointed under this  
 12 subdivision may not be members of the same political party.

13 (3) Two (2) members appointed by the governor who are  
 14 representatives of local government. The members appointed  
 15 under this subdivision may not be members of the same  
 16 political party.

17 (4) Two (2) members appointed by the governor who are  
 18 representatives of environmental interests.

19 (5) Two (2) members appointed by the governor who are  
 20 representatives of business and industry.

21 (6) Two (2) members appointed by the governor who are  
 22 attorneys with expertise in environmental law.

23 (7) The commissioner of the department of environmental  
 24 management or the commissioner's representative.

25 (8) One (1) member appointed by the attorney general.

26 (9) One (1) member appointed by the prosecuting attorneys  
 27 council of Indiana who is a representative of prosecuting  
 28 attorneys.

29 (10) The director of the law enforcement division of the  
 30 department of natural resources or the director's designee.

31 The appointments required under this subsection shall be made  
 32 before July 1, 2003.

33 (d) The appointed members of the task force serve at the  
 34 pleasure of the appointing authority. The appointing authority  
 35 shall fill any vacancy on the task force within forty-five (45) days.

36 (e) The chairman of the legislative council shall designate a  
 37 legislative member of the commission to serve as chairperson of the  
 38 commission.

39 (f) The expenses of the task force shall be paid from  
 40 appropriations made to the legislative council or the legislative  
 41 services agency.

42 (g) The task force shall do the following:



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**(1) Conduct studies necessary to prepare a final report that includes at least the following:**

**(A) A summary of environmental crime statutes of other states.**

**(B) A summary of requirements of federal environmental programs delegated to states.**

**(C) A summary of federal criminal sentencing guidelines.**

**(D) Recommendations about which environmental law violations should be a misdemeanor, a Class D felony, or another class of felony.**

**(E) If determined appropriate by the task force, recommendations for legislation, including a set of specific statutory standards for determining criminal violations.**

**The task force must consider in its studies the full range of issues dealing with environmental law.**

**(2) Submit its final report before November 1, 2005, to:**

**(A) the governor;**

**(B) the executive director of the legislative services agency; and**

**(C) the environmental quality service council.**

**(h) The legislative services agency shall provide staff support to the task force.**

**(i) Each member of the task force who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**(j) Each member of the task force who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**(k) Each member of the task force who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council.**

**(l) The affirmative votes of a majority of the members of the**



1 task force are required for the task force to take action on any  
2 measure, including the final report.

3 (m) The task force shall operate under the rules of the legislative  
4 council.

5 (n) This SECTION expires January 1, 2006.

6 SECTION 3. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Lanane be added as second author of Senate Bill 114.

KENLEY

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 114, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 114 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## SENATE MOTION

Mr. President: I move that Senate Bill 114 be amended to read as follows:

Page 2, between lines 9 and 10, begin a new line block indented and insert:

**"(10) One (1) member appointed by the prosecuting attorneys council of Indiana who is a representative of prosecuting attorneys."**

(Reference is to SB 114 as printed January 15, 2003.)

KENLEY

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 114, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-28-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26.5. (a) This section applies to the following activities:

(1) The placement or replacement of a mobile home within a boundary river floodway.

(2) The repair of a residence that:

(A) is located in a boundary river floodway; and

(B) has been damaged by floodwaters or another means; except for the reconstruction of a residence to which section 25 of this chapter applies.

(3) The construction of an:

(A) addition to; or

(B) improvement of; a residential structure within a boundary river floodway.

**(4) The construction of a new residence within a boundary river floodway.**

(b) The federal regulations that:

(1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);

(2) are published in 44 CFR Parts 59 through 60; and

(3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. **However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.**

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

(1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and

(2) the person obtains a permit for the activity under this section.

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(d) To obtain a permit for an activity referred to in subsection (a), a person must:

- (1) file with the director a verified written application for a permit on a form provided by the department; and
- (2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

- (1) set forth the material facts concerning the proposed activity; and
- (2) in the case of an activity described in subsection (a)(1), ~~or~~ (a)(3), **or (a)(4)**, include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

- (1) there is a dispute under this section about the elevation of a site; and
- (2) the elevation of the site has been determined by a registered land surveyor;

the elevation determined by the registered land surveyor must be used as the accepted elevation."

Page 2, delete lines 5 through 6.

Page 2, line 7, delete "(8)" and insert **"(7)"**.

Page 2, line 9, delete "(9)" and insert **"(8)"**.

Page 2, line 10, delete "(10)" and insert **"(9)"**.

Page 2, between lines 12 and 13, begin a new line block indented and insert:

**"(10) The director of the law enforcement division of the department of natural resources or the director's designee."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 114 as reprinted January 24, 2003.)

BOTTORFF, Chair

Committee Vote: yeas 13, nays 0.

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